UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ DEC 21 2015 ★
LONG ISLAND OFFICE

DANIEL PELUSO,

Plaintiff,

VERIFIED COMPLAINT

Civ. No.

-against-

CV-15 7247

CENTEREACH FIRE DISTRICT, COMMISSIONER JULIA ANNE WILSON, COMMISSIONER FRANK RUDILOSSO, COMISSIONER RAYMOND CATAPANO, COMMISSIONER SCOTT JORDAN AND COMMISIONER DOMINICK D'ONOFRIO, individually and in their official capacity,

Defendants.
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AZRACK, J.

LOCKE, M. J.

COMPLAINT AND JURY DEMAND

Plaintiff, DANIEL PELUSO, by and through his undersigned counsel, as and for his Complaint in this action, hereby alleges as follows:

NATURE OF THE CLAIMS

1. This is an action for relief and for damages to redress the wrongful termination of Plaintiff, DANIEL PELUSO, a civil service employee, in violation of his constitutional rights to due process of law and freedom of speech, the New York Civil Service Law, and his slander, among other unlawful and tortuous conduct by Defendants.

2. By terminating Plaintiff, Defendant Commissioners and CENTEREACH FIRE DISTRICT, deprived Plaintiff of his property interest in continued employment as well as accrued vacation/sick time approximately 255 hours at $42.56 per hour, in violation of his rights under the Fifth and Fourteenth Amendment to the United States Constitution. In addition, Plaintiff was terminated as retaliation for statements his wife made regarding matters of public concern. Plaintiff,

therefore, seeks complete "make whole" relief and other damages, as well as other equitable relief to redress the violation of his constitutional rights.

3. By terminating Plaintiff, a civil service employee, despite the fact that he had performed his duties in an adequate fashion and had not engaged in any misconduct, the Fire District Defendants violated the New York Civil Service Law § 75 et seq.

4. By terminating Plaintiff in retaliation for his wife's complaints in the Fire District building, the CENTEREACH DEFENDANTS, violated the anti-retaliation provisions of the New York State Human Rights Law, New York Executive Law § 296 et seq.

5. By making false and derogatory public statements regarding Plaintiff, the Fire District Defendants have unlawfully defamed and/or slandered Plaintiff, causing severe and irreparable harm to his reputation and extreme emotional distress.

6. Defendants' conduct was intentional, knowing and malicious negligent and/or showed a willful, wanton or reckless disregard for the rights of Plaintiff, which has caused and continues to cause Plaintiff to suffer substantial economic and non-economic damages, severe physical and mental anguish, and emotional distress, breach of contract and conversion.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343, as this action involves federal questions regarding the deprivation of Plaintiff's rights under the Constitution of the United States and federal civil rights laws. The Court has supplemental jurisdiction over Plaintiff's related claims arising under state or local law pursuant to 28 U.S.C. § 1367(a).

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this district.

PARTIES

9. Plaintiff, DANIEL PELUSO ("Plaintiff" or "PELUSO") is an individual residing at 110 Jacqueline Lane, Centereach, County of Suffolk, State of New York. At all relevant times, he was employed with the CENTEREACH DISTRICT as a maintenance employee.

10. Defendant, CENTEREACH FIRE DISTRICT ("DISTRICT") is a municipal corporation with offices at 9 S. Washington Avenue, Centereach, County of Suffolk, State of New York, which exists and operates under and by virtue of the laws of the State of New York.

11. Defendant, COMMISSIONER JULIA ANN WILSON, is an individual and is a Fire Commissioner in the CENTEREACH FIRE DISTICT, and is sued herein in her individual and official capacities. Commissioner Wilson personally directed and participated in the termination of Mr. Peluso by CENTEREACH FIRE DISTRICT, made defamatory statements regarding him, and directed and participated in other tortuous and unlawful conduct by CENTEREACH DEFENDANTS.

12. Defendant, COMMISSIONER FRANK RUDILOSSO, is an individual and is a Fire Commissioner in the CENTEREACH FIRE DISTRICT, and is sued herein in his individual and official capacities. Commissioner Rudilosso personally directed and participated in the termination of Mr. Peluso by CENTEREACH FIRE DISTRICT, made defamatory statements regarding him, and directed and participated in other tortuous and unlawful conduct by CENTEREACH DEFENDANTS.

13. Defendant, COMMISSIONER RAYMOND CATAPANO, is an individual and is a Fire Commissioner in the CENTEREACH FIRE DISTRICT, and is sued herein in his individual and official capacities. Commissioner Catapano personally directed and participated in the termination of Mr. Peluso by CENTEREACH FIRE DISTRICT, made defamatory statements

regarding him, and directed and participated in other tortuous and unlawful conduct by CENTEREACH DEFENDANTS.

14. Defendant, COMMISSIONER SCOTT JORDAN, is an individual and is a Fire Commissioner in the CENTEREACH DISTRICT, and is sued herein in his individual and official capacities. Commissioner Jordan personally directed and participated in the termination of Mr. Peluso by CENTEREACH FIRE DISTRICT, made defamatory statements regarding him, and directed and participated in other tortuous and unlawful conduct by CENTERACH DEFENDANTS.

15. Defendant COMMISSIONER DOMINICK D'ONOFRIO, is an individual and is a Fire Commissioner in the CENTEREACH FIRE DISTRICT, and is sued herein in his individual and official capacities. Commissioner D'Onofrio personally directed and participated in the termination of Mr. Peluso by CENTEREACH FIRE DISTRICT, made defamatory statements regarding him, and directed and participated in other tortuous and unlawful conduct by CENTEREACH DEFENDANTS.

FACTUAL ALLEGATIONS

PELUSO's Civil Service Employment

16. In or about 1985, Mr. Peluso, became a member of the CENTEREACH FIRE DEPARTMEN. He began his employment as an employee with CENTEREACH FIRE DISTRICT as a Mechanic in 2003.

17. At all times during his employment for CENTEREACH FIRE DISTRICT, Mr. Peluso conducted his work in a more than adequate fashion.

18. None of Mr. Peluso's colleagues or supervisors, nor any other representative of CENTEREACH FIRE DISTRICT ever suggested to him that his work product was in any way deficient or that he had engaged in any misconduct.

19. During Mr. Peluso's employment with CENTEREACH FIRE DISTRICT, he became aware of numerous improprieties involving the CENTEREACH DEFENDANTS.

20. For example, among other improprieties, the CENTERACH DEFENDANTS directed and/or participated in the following unlawful conduct: (a) caused plaintiff's wife, Tracy Peluso, to be terminated from the Centereach Fire Department. Mrs. Peluso was successful in her discrimination claim and received a settlement.

21. As retaliation against Mrs. Peluso, the CENTEREACH FIRE DISTRICT bought charges against Mr. Peluso. Mr. Peluso was a 13 year employee of the CENTEREACH FIRE DISTRICT. Mr. Peluso respectfully submits that he has been an employee of the CENTEREACH FIRE DISTRICT since January, 2003. He was hired as an Assistant Mechanic from 2003 to 2005. In 2005, he took over as the Chief Mechanic at the District. The practices that Mr. Peluso followed were the practices that were taught to him by the prior Chief Mechanic. Mr. Peluso followed the training procedures that were instructed to him by commissioners, management personnel in the Fire District, including, but not limited to, Chief Mechanic Richard McKenna. Mr. Peluso's habits did not change over the eleven year period. Mr. Peluso's wife, Tracy Peluso, was dismissed from the Centereach Fire Department on or about May 2, 2013. It is Mr. Peluso's position that these charges were brought against him because his wife, after her dismissal from the fire department, filed and EEOC claim against the Centereach Fire Department for her claim of discrimination. The charges against Mr. Peluso were brought on or about June 27, 2014. It is my client's position that these charges were retaliatory against the family for his wife, Tracy Peluso, speaking negatively about the Fire Department.

22. Mr. Peluso went from being an Assistant Mechanic to Chief Mechanic. He has been factory trained in the following: Air Brakes, Vehicle Suspensions, FRC Electronics, Multi-Plex Diagnostics Systems, Akron Valve Assemblies, Cummings Motors, Detroit Motors, Willburt Light

Towers, Interlocks, New York State Inspector License and Snap-on Diagnostic Trained. In addition, he has the following National Certifications in Emergency Vehicle Training: Fire Apparatus Technicians Exams, Inspection, Maintenance and Testing of Fire Apparatus, Design Y Performance Standards of Fire Apparatus, Fire Pumps & Accessories, Fire Apparatus Electrical Systems, Aeriel Fire Apparatus, Allison Automatic Transmissions, Advanced Electrical Systems, Foam Systems and Hydraulic Systems. Mr. Peluso is a Certified Management Trainer who is qualified to teach how to build a maintenance program for Fleet Repairs and Record retention according to MFPA standards in addition to being certified to train in Fire Apparatus inspection, Maintenance, Design and Performance standards. In addition, he was factory certified by the fire truck manufacturers to perform warranty work. When Mr. Peluso worked on CENTEREACH FIRE DISTRICT'S vehicles, that repair covered warrant, the CENTEREACH FIRE DISTRICT would be reimbursed $95.00 per hour for every hour Mr. Peluso worked on these vehicles. CENTEREACH FIRE DISTRICT also contracted with Stony Brook Fire District for DANIEL PELUSO to perform repairs to Stony Brook fire apparatus, regular basic maintenance and big repairs. The fee of $75.00 per hour collected by CENTEREACH FIRE DISTRICT also for these repairs. Mr. Peluso is now a part-time mechanic at the Holbrook Fire District where he works on other department vehicles as well, including CENTEREACH FIRE DISTRICT.

23. It was alleged Mr. Peluso was obligated to pay and failed to pay to New York State, sales tax on vehicle parts that were delivered to the CENTEREACH FIRE DISTRICT for Fire District or Fire Department personnel. In sum and substance, the Fire District's claim was something to the tune of $62.00 that Mr. Peluso was obligated but did not pay. Mr. Peluso had a hearing where he was unrepresented and he was found to be guilty of not paying the sales tax. The consumer is not the tax collector but rather the vendor is the fiduciary for the state sales tax. Mr. Peluso has no duty to the State to collect, hold and submit sales tax. Simply put, the consumer pays

the bill as presented. With the foregoing in mind, Mr. Peluso was terminated from his position.

The CENTEREACH Defendants' Defamatory Public Statements Regarding Plaintiff

24. Upon information and belief, the CENTEREACH DEFENDANTS defamed Mr. Peluso. During January, 2015, Mr. Peluso was elected Fire Commissioner again for the CENTEREACH FIRE DISTRICT. At the first meeting when he was sworn in, the Fire Commissioners read into the minutes of the meeting that Mr. Peluso had been terminated for corruption. Furthermore, they refused to give him access to the Commissioner's Room as well as the following defamatory public statements: published his termination in Newsday numerous times; threatened on social media of state and federal indictment; read termination charges at commissioner's meeting when Mr. Peluso was being sworn in as Commissioner; wrote letters to insurance companies stating that Mr. Peluso was not bondable; forwarded same letter to President of the Fire Department Benevolent Association, which Mr. Peluso is an elected secretary; went to Mr. Peluso's place of employment numerous times to "warn" his bosses about Mr. Peluso not being a good person, he is a thief and cannot be trusted; sent District Attorney to Mr. Peluso's job to request all invoices involving Mr. Peluso and Hendickson doing business together, including asking for any business Mr. Peluso and Hendrickson had regarding Mr. Peluso's tool invention (Neverbind); when Mr. Peluso became Commission at every meeting the other Commissioners (especially Wilson) would refer to Mr. Peluso as not being trustworthy to receive his fiduciary rights; denied by other Commissioners of his fiduciary right as an elected official, denying to give him credit cards, access to file room, access to GPS records/computer, time cards of employees, financial records all done in an open public meeting; spread rumors among Fire Department where Mr. Peluso has been a volunteer fireman for 30 years, thereby causing question to Mr. Peluso's character as a good and moral person; hired a lawyer to threaten Mr. Peluso with a lawsuit for harassment and causing a hostile work environment towards Rudy (District Manager of Fire District) and Jennifer Gardner (secretary). Mr.

Peluso was in office for six days when this letter was written.

25. On information and belief, the CENTEREACH DEFENDANTS have made numerous other similar false and defamatory statements regarding Mr. Peluso to other persons, including persons involved in the CENTEREACH FIRE DISTRICT, as part of their defamatory public relations campaign.

26. These statements are false, were made maliciously, and were intended to and did defame Mr. Peluso in his profession, destroy his professional credibility, and ruin his good standing in the community.

27. Upon information and belief, as a result of the CENTEREACH DEFENDANTS' false and malicious statements, many of Mr. Peluso's professional contacts, as well as his friends and neighbors, have come to believe that Mr. Peluso was incompetent and he was of poor moral character as the Chief Mechanic for the CENTEREACH FIRE DISTRICT, a Fire Commissioner, a Fire Chief, a Fire Captain, a Fire Lieutenant and firefighter. This erroneous and unjust public perception has irreparably harmed Mr. Peluo's professional contacts and reputation in the Centereach community.

AS AND FOR A FIRST CAUSE OF ACTION

(VIOLATION OF PLAINTIFF'S FOURTEENTH AMENDMENT RIGHTS UNDER 42 U.S.C. § 1983, AGAINST DEFENDANTS CENTEREACH FIRE DISTRICT AND THE DEFENDANTS INDIVIDUALLY)

28. Plaintiff hereby repeats and realleges each allegation contained in paragraphs "1" through "27" inclusive, as if fully set forth herein.

29. The Fire District Defendants, acting in concert with one another and/or individually, wrongfully terminated Plaintiff from his civil service position upon a fabricated allegation which

was unsupported by anyone with any direct knowledge.

30. Defendants' conduct was intentional, knowing and malicious and/or showed a willful, wanton or reckless disregard for the rights of Plaintiff.

31. In addition to suffering the deprivation of his constitutional rights, Plaintiff has suffered, and continues to suffer, substantial economic and non-economic harm for which he is entitled to an award of damages.

AS AND FOR A SECOND CAUSE OF ACTION

(VIOLATIONS OF NEW YORK CIVIL SERVICE LAW, AGAINST DEFENDANTS CENTEREACH FIRE DISTRICT AND COMMISSIONERS, COLLECTIVELY AND INDIVIDUALLY)

32. Plaintiff hereby repeats and realleges each allegation contained in paragraphs "1" through "31" inclusive, as if fully set forth herein.

33. As previously alleged, Plaintiff was a civil service employee of CENTEREACH FIRE DISTRICT.

34. Accordingly, pursuant to New York Civil Service Law, Plaintiff could only be terminated for "incompetency or misconduct shown after a hearing upon stated charges pursuant to this section."

35. The Fire District Defendants, acting in concert with one another and/or individually, wrongfully terminated Plaintiff for reasons having nothing to do with alleged incompetence or misconduct in violation of New York Civil Service Law.

36. The Fire District Defendants' conduct was intentional, reckless, knowing, negligent and malicious and/or showed a willful, wanton or reckless disregard for the rights of Plaintiff.

37. As a result of the actions of the Fire District Defendants in violation of New York Civil Service Law, Plaintiff has suffered, and continues to suffer, substantial economic and non-economic harm for which he is entitled to an award of damages.

AS AND FOR A THIRD CAUSE OF ACTION

(DEFAMATION/SLANDER, AGAINST DEFENDANTS CENTEREACH FIRE DISTRICT AND COMMISSIONERS)

38. Plaintiff hereby repeats and realleges each allegation contained in paragraphs "1" through "37" inclusive, as if fully set forth herein.

39. The CENTEREACH DEFENDANTS, acting in the course and scope of their duties for CENTEREACH FIRE DISTRICT, and CENTEREACH FIRE DEPARTMENT have made false statements of fact concerning Plaintiff to third parties, both in writing, and through spoken words.

40. The Fire District Defendants have made these defamatory statements with actual malice and knowledge of their falsity or, in the alternative, with a reckless and/or negligent disregard of the truth or falsity of the statements.

41. The Fire District Defendants' false and derogatory statements have tended to injure, and have in fact injured, Plaintiff in his profession and the nature of the statements have been such as to expose Plaintiff to public contempt, ridicule, aversion and disgrace, induce an evil opinion of his in the minds of right-thinking persons, and deprive him of friendly intercourse in society.

42. The CENTEREACH DEFENDANTS has authorized, ratified, and adopted these statements, in particular through the words and actions of the CENTEREACH DEFENDANTS, Chief and Commissioners.

43. As a result of the defamatory statements of the CENTEREACH DEFENDANTS,

Plaintiff has suffered, and continues to suffer, substantial economic and non-economic harm for which he is entitled to an award of damages.

AS AND FOR A FOURTH CAUSE OF ACTION

(BREACH OF CONTRACT, AGAINST DEFENDANTS

CENTEREACH FIRE DISTRICT AND COMMISSIONERS)

44. Plaintiff hereby repeats and realleges each allegation contained in paragraphs "1" through "43" inclusive, as if fully set forth herein.

45. The Plaintiff, DANIEL PELUSO, entered into a contract on or about January, 2003, with the defendants, CENTEREACH FIRE DISTRICT for employed on an hourly basis.

46. The defendant, CENTEREACH FIRE DISTRICT, breached the Contract of employment by failing to pay the Plaintiff, DANIEL PELUSO, as per the terms of his employment as outlined in the Employee Handbook, for 255 hours of payment due to the Plaintiff at the rate of $42.56 for a total of TEN THOUSAND EIGHT HUNDRED FIFTY TWO AND 80/100 ($10,852.80) DOLLARS rightfully due to the Plaintiff.

47. That defendants have failed and refused in every respect to pay to the Plaintiff, DANIEL PELUSO, TEN THOUSAND EIGHT HUNDRED FIFTY TWO AND 80/100 ($10,852.80) DOLLARS that being the value of his services.

48. That as result of the illegal and improper conversion of funds, plaintiff, DANIEL PELUSO has been deprived of the use and benefits of said property.

AS AND FOR A FIFTH CAUSE OF ACTION

(CONVERSION AGAINST DEFENDANTS

CENTEREACH FIRE DISTRICT AND COMMISSIONERS)

49. Plaintiff hereby repeats and realleges each allegation contained in paragraphs "1" through "48" inclusive, as if fully set forth herein.

50. On or about August, 2014, the defendants, CENTEREACH FIRE DISTRICT, did wrongfully and unlawfully convert and appropriate to themselves and for their sole and exclusive use and benefit to the detriment of the Plaintiff, DANIEL PELUSO , the sum of TEN THOUSAND EIGHT HUNDRED FIFTY TWO AND 80/100 ($10,852.80) DOLLARS.

51. That the defendants have failed and refused in every respect to convey, deliver or otherwise transfer back the funds to the Plaintiff, which is Plaintiff's property, although duly demanded..

52. That defendants have failed and refused in every respect to pay to the Plaintiff, TEN THOUSAND EIGHT HUNDRED FIFTY TWO AND 80/100 ($10,852.80) DOLLARS, although duly demanded.

53. That as result of the illegal and improper conversion of funds, plaintiff, DANIEL PELUSO has been deprived of the use and benefits of said property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court enter judgment in his favor and against

Defendants, jointly and severally, containing the following relief:

A. An award of damages in an amount to be determined at trial, but not less than $100,000.00, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic damages, including but not limited to, the loss of past and future income, wages, and other compensation;

B. An award of damages in an amount to be determined at trial, but not less than $100,000.00 plus prejudgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages, including but not limited to, compensation for her severe mental anguish, depression, humiliation, anxiety, embarrassment and severe emotional distress caused by Defendants;

C. An award of damages for any and all other monetary and/or non-monetary losses suffered by Plaintiff in an amount to be determined at trial, plus prejudgment interest;

D. An award of punitive damages, in an amount to determined at trial, but not less than $100,000.00, sufficient to deter Defendants from engaging in future illegal and/or wrongful conduct;

E. An award of costs that Plaintiff incurred in this action, as well as his reasonable attorneys' fees, to the fullest extent permitted by law; and

J. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: December 7, 2015

Respectfully submitted,

LAW OFFICE OF MICHAEL V. DEVINE

By: ______________________
MICHAEL V. DEVINE (MD-9814)
Office and P.O. Address
87 Cliff Road
Belle Terre, New York 11777
Telephone: (631) 474-5400
Facsimile: (631) 474-3772

Counsel for Plaintiff
DANIEL PELUSO

TO: CENTEREACH FIRE DISTRICT
9 Washington Avenue
Centereach, New York 11720

CERTIFICATE OF SERVICE

A copy of the Complaint was served this 8th day of December, 2015, by ECF and ordinary mail on the Defendants as follows:

MICHAEL V. DEVINE (MD-9814)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---X
DANIEL PELUSO,

Plaintiff,

INDIVIDUAL VERIFICATION

Civ. No.

-against-

CENTEREACH FIRE DISTRICT, COMMISSIONER
JULIA ANNE WILSON, COMMISSIONER
FRANK RUDILOSSO, COMISSIONER
RAYMOND CATAPANO, COMMISSIONER
SCOTT JORDAN AND COMMISIONER
DOMINICK D'ONOFRIO, individually and in their
official capacity,

Defendants.
---X

STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

I, DANIEL PELUSO, being duly sworn, depose and say that I am the plaintiff in the within action. I have read the foregoing amended Complaint and know the contents thereof, the same is true to my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

DANIEL PELUSO

Sworn to before me this
7th day of December, 2015

Notary Public

MICHAEL V. DEVINE
NOTARY PUBLIC STATE OF NEW YORK
NO. 02DE4999230
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES JULY 20, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--X
DANIEL PELUSO,

Plaintiff,

ATTORNEY CERTIFICATION

Civ. No.

-against-

CENTEREACH FIRE DISTRICT, COMMISSIONER JULIA ANNE WILSON, COMMISSIONER FRANK RUDILOSSO, COMISSIONER RAYMOND CATAPANO, COMMISSIONER SCOTT JORDAN AND COMMISIONER DOMINICK D'ONOFRIO, individually and in their official capacity,

Defendants.
--X

I hereby certify under penalty of perjury, and as an officer of the Court, that I have no knowledge that the substance of any of the factual submissions contained in this document is false.

Dated: Port Jefferson, New York
December 7, 2015

MICHAEL V. DEVINE